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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing	)	
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Filing Date: October 18, 2018	)	Case No.: PSH-18-0074
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Issued: January 9, 2019

**Administrative Judge Decision**

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R., Part 710, entitled “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (June 8, 2017) (the “Adjudicative Guidelines”), I conclude that the Individual’s access authorization should not be restored.

**I. BACKGROUND**

In 2017, the Individual completed a Questionnaire for National Security Positions (QNSP) as part of his application for a security clearance. The QNSP revealed information that cast doubt on the Individual’s fitness to hold a security clearance. The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual. After the PSI, the Individual was referred to a DOE consultant Psychiatrist (“Psychiatrist”) for an evaluation. The Psychiatrist issued a report. The Psychiatrist subsequently provided the DOE with an addendum to the report less than a month after the issuance of the original report.

On August 30, 2018, the LSO sent a letter (“Notification Letter”) to the Individual advising him that it had reliable information that created a substantial doubt regarding his eligibility for access authorization. *See* 10 C.F.R. § 710.21. In the attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guideline I of the Adjudicative Guidelines.

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<sup>1</sup> Under the regulations, “[a]ccess authorization means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will also be referred to in this Decision as a security clearance.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing, the Individual presented the testimony of two witnesses and testified on his own behalf. The LSO submitted ten exhibits (Exs. 1-10) and the Individual submitted five exhibits (Exs. A-E) into the record of this proceeding.<sup>2</sup> The hearing transcript will be cited as “Tr.” followed by the relevant page number.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline I of the Adjudicative Guidelines.

The LSO alleges that the Psychiatrist diagnosed that the Individual has a mental health condition that meets the criteria for the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (DSM-5) of Major Depressive Disorder, Recurrent Episode, in Full Remission, with Anxious Distress,<sup>3</sup> for which he is not being monitored or receiving treatment. Ex. 1. Guideline I provides that certain mental conditions can impair judgment, reliability, or trustworthiness. Adjudicative Guidelines at ¶ 27. Specifically, “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness” may raise a disqualifying security concern. *Id.* at ¶ 28(b).

## **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence

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<sup>2</sup> Exhibit D is an audio recording of a 2015 student conduct hearing concerning the Individual. Exhibit F is a written witness statement.

<sup>3</sup> All conditions cited in this Decision are from criteria contained in the DSM-5.

at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

#### **IV. FINDINGS OF FACT**

The circumstances that lead to the Individual's initial diagnosis occurred in 2015. At that time, the Individual was a college student and simultaneously enrolled in a program that was preparing him for a career which he had been singularly focused on achieving for several years. *See, e.g.*, Ex. 7 at 6. During the school year, he began feeling overwhelmed by his academic obligations and subsequently visited the school counseling center four or five times. *Id.* at 1. There, the Individual reported experiencing several symptoms over the preceding two weeks, including crying, low energy, and excessive worrying. Ex. 6 at 1. At one of the later counseling sessions, he rated his desire to harm himself at a 1 out of 4. *Id.* at 2, 28.

Weeks later, on a particularly stressful evening after a long, stressful day, the Individual became upset and made statement that some witnesses interpreted as threatening harm to himself and others. Ex. 2 at 1. His statements and accompanying conduct eventually led to him being transported to a hospital in which he was briefly evaluated by a psychiatrist who diagnosed him with Severe Major Depression, Single Episode, With Psychotic Features, Mood-Congruent. Ex. 7 at 43-46. The day after his admission to the hospital, he participated in a civil commitment hearing which resulted in his involuntary commitment. *Id.* at 5. After two days, the Individual improved and was discharged by a doctor with a diagnosis of Depressive Disorder Not Otherwise Specified. *Id.* at 5, 39.

After being discharged, the Individual returned to campus and continued his academic program. However, he faced two new challenges. First, he was the subject of a student conduct hearing as a result of his behavior on the evening of his hospitalization. His testimony, and that of two student witnesses, cleared him of all "charges." *Id.* at 6. Second, the Individual learned that he would not be able to pursue his ideal career as a consequence of his hospitalization and involuntary commitment. *Id.* at 6, 50. Upon learning the latter, the Individual suffered a period of grief during which he experienced, among other things, significantly diminished motivation and concentration, depressed mood, and thoughts of shame and worthlessness. *Id.* at 6, 9. As he continued his studies and moved out of the dorms prior to graduation, his mood improved. *Id.* at 6.

After graduation, the Individual secured his present employment in 2017. However, he later attended four counseling sessions because he felt bored at work and lacked motivation. *Id.* at 7. The treatment provider reported that the Individual was still dealing with the loss of his original career aspirations. Ex. 7 at 7. The treatment provider diagnosed the Individual with Adjustment Disorder with Depressed Mood. *Id.* After the final session, the treatment provider concluded "[the Individual] reported he has met his goals for treatment" and the recommendation stated "[t]erminate treatment." *Id.* at 30.

During the Psychiatrist's evaluation of the Individual, the Individual felt that he had been doing very well and no longer experienced the feelings that prompted his post-graduation counseling sessions. *Id.* at 7. He had recently taken an exam to pursue graduate school, and he reported a positive mood, good motivation, adequate energy, and an absence of irritability. *Id.* He also intended to address any future emotional distress by taking leave from work or, if that did not work, by consulting a healthcare professional. *Id.*

Based on an evaluation of the Individual and a review of the information contained in his record, the Psychiatrist concluded that the Individual met the criteria for Major Depressive Disorder, Recurrent Episode, in Full Remission, With Anxious Distress.<sup>4</sup> *Id.* at 4. First, the Psychiatrist determined that the Individual met the criteria for Major Depressive Disorder in the two-week period that preceded his hospitalization. Ex. 6 at 2. The Psychiatrist dismissed the hospital's diagnosis of Severe Major Depression, Single Episode, With Psychotic Features, Mood-Congruent, as not being supported by sufficient evidence. Ex. 7 at 8. Second, the Psychiatrist determined that the Individual met the criteria for Major Depressive Disorder during the period in time in which the Individual learned that he could no longer pursue his original career aspirations. *Id.* at 9. The Psychiatrist opined that during both periods of Major Depressive Disorder, the Individual "experienced direct compromise to his judgment, stability, and reliability . . . ." Ex. 6 at 4. Additionally, the Psychiatrist opined that, without treatment, there is a "statistically high probability (over 50%) that he will experience future major depressive episodes . . . ." *Id.* Therefore, the Psychiatrist recommended (1) that the Individual "engage in a therapeutic relationship" with a mental health professional to facilitate early-intervention if treatment is needed again, and (2) that the appointments with the mental health professional should occur at least quarterly for a minimum duration of two years. *Id.*

At the hearing, the Individual's supervisor testified that the Individual is an exceptional employee. Tr. at 37. The supervisor stated that the Individual has a great attitude, is responsible, and handles frustrating situations with impressive patience and positivity. Tr. at 37-40. A separate work colleague provided a written statement that echoed the tenor of the supervisor's testimony and stated that the Individual is "reliable, trustworthy, and with sound judgment." Ex. D. The Individual's former college roommate and current friend also testified that he had no concerns regarding the Individual's judgment, reliability, or trustworthiness. Tr. at 16.

The Individual's testimony confirmed that he experienced significant stress his final year of college. Tr. at 12. In addition to his coursework, he also had several other extracurricular responsibilities that included leadership roles. High expectations accompanied the leadership roles, and he felt pressure to be perfect. Tr. 46-47. In addition, his relationship with his girlfriend began to fail. Tr. at 71. In the period leading up to his hospitalization, it was she who recommended that he visit a counselor. Tr. at 71. However, the Individual stated that the techniques he learned from this first counselor did not effectively relieve his stress. Tr. at 72.

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<sup>4</sup> The Psychiatrist originally provided a diagnosis of Other Specified Trauma and Stressor-Related Disorder for the period of time leading up to the Individual's hospitalization in his initial report before revising his diagnosis to Major Depressive Disorder in the addendum. Ex. 6. The Psychiatrist revised his opinion after subsequently receiving and reviewing counseling records from the Individual's college for the period preceding the Individual's hospitalization. *Id.* at 1-3. The records contained information which differed from the Individual's self-reporting. *Id.*

The Individual did not dispute that he experienced the symptoms cited by the first counselor's records nor that he made statements that concerned witnesses on the night of his hospitalization. Instead, he provided a different explanation for their occurrence or minimized their severity. For example, he blamed the escalation of events leading to hospitalization on miscommunication. Tr. at 90-21; *see also* Ex. 2 at 1-3. He also explained his reporting of suicidal thoughts reflected a fear of death as opposed to a desire to end his life. Tr. at 95.

The Individual also described the treatment he received after his hospitalization. After his returned to campus, he was required to go to the campus counselling center for several sessions. Tr. 72-73. Later, after the Individual learned of his inability to pursue his ideal career, he returned to the center and there learned to process grief. Tr. at 74-75.

He then explained that he began seeing another treatment provider in 2017 at his current girlfriend's suggestion. Tr. at 76. The Individual had become increasingly frustrated by the clearance process and his resultant inability to work on substantive projects. Tr. at 76. He received treatment for four visits over eight weeks. Tr. at 80. He reported that during the treatment he identified a lack of career planning as a reason for the stress he experienced because he realized the importance of having a security clearance for his current position. Tr. at 77-78.

The Individual testified that he knows when to seek stress-related treatment, he realizes the importance of controlling stress as a clearance holder, and the need to report additional treatment would not prevent him from seeking treatment in the future. Tr. 81-84. He stated that throughout the process, he has learned the difference between general and "serious stress" and "not to say certain things [he does not literally] mean." Tr. at 84.

As of the date of the hearing, the Individual had not followed any of the Psychiatrist's recommendations. The Individual had hoped the information he provided during the administrative process would preclude the need. Tr. at 89. However, the Individual had recently begun contacting various psychologists in an attempt to follow through with the Psychiatrist's recommendations. Tr. at 88. And the Individual stated that he would follow through with the Psychiatrist's recommendations if they remained unchanged by the end of the hearing. Tr. at 117.

The Psychiatrist testified that the Individual had two discrete episodes in which he experienced Major Depressive Disorder. Tr. at 135. The first episode began before, and included, the Individual's hospitalization. Tr. at 141. After the Individual returned to campus and took action to reduce his stressful schedule, the Individual seemed free of depressive symptoms, which initiated the intervening period leading up to his second episode of Major Depressive Disorder. Tr. at 145-46. This second episode occurred after the Individual learned that he would no longer be able to pursue his ideal career. Tr. at 136.

The Psychiatrist explained that the justifications the Individual provided as to why he may have experienced certain symptoms did not alter his diagnosis. Tr. at 180-81, 203. The Psychiatrist took care to explain that the assertion that the Individual threatened to harm others did not factor into his diagnosis. Tr. at 168. The Psychiatrist also stated that the Individual was not currently experiencing an episode of Major Depressive Disorder. Tr. at 214.

The Psychiatrist explained why he diagnosed the Individual with Major Depressive Disorder, Recurrent. Recurrent indicates the Individual experienced at least two discrete episodes of the disorder. Tr. at 153. The Psychiatrist also explained that people who experience one major depressive episode are approximately 50% likely to experience another episode. Tr. at 192. For those that experience two episodes, the likelihood increases to about 75%-80%. Tr. at 192. This likelihood of recurrence, and the potential consequences, informed the Psychiatrist's recommendation that the Individual have at least twenty-four months of monitoring by a mental health professional. Tr. at 193.

The Psychiatrist explained that, generally, the likelihood of recurrence decreases as the length of time without recurrence increases. Tr. at 205. The Psychiatrist also explained that the condition is readily controllable with treatment. Tr. at 214-215. Since the Individual had not reported any depressive symptoms since the Psychiatrist's evaluation, and his self-reporting was consistent with witness testimony, the Psychiatrist lowered the recommendation period to eighteen months. Tr. at 159. The Psychiatrist explained that the recommended monitoring was important to ensure that the Individual could receive treatment without undue delay if symptoms reoccurred. Tr. at 213. Similarly, a treating mental health professional would be able to recommend an increase in sessions to address any recurrence. Tr. at 213. And, importantly, the mental health professional would be able to identify issues or symptoms that may remain hidden from others and the Individual himself. Tr. at 159. Thus, the Psychiatrist concluded that while the Individual was not currently suffering from Major Depressive Disorder, the Individual's condition still presented a significant risk of recurrence. Tr. at 212.

## **V. ANALYSIS**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the Individual and witnesses. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's access authorization should not be restored at this time. I cannot find that restoring the Individual's security clearance will not endanger the common defense and security, and that it is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this Decision are discussed below.

### **A. Guideline I (Psychological Conditions)**

As an initial matter, the Psychiatrist presented sufficient evidence to demonstrate that the Individual previously experienced two episodes of Major Depressive Disorder, which is a psychological condition that can impair judgment, reliability, or trustworthiness. Adjudicative Guidelines at ¶ 27. The evidence demonstrates that the Individual is an excellent employee. There is no evidence which indicates the Individual is currently experiencing a Major Depressive Disorder episode. As such, the evidence does not support a finding that his judgement, reliability, and trustworthiness are presently compromised by the condition. The evidence also demonstrates that he has sought mental health treatment when those in his support system recommended that he do the same. Furthermore, the evidence demonstrates that the Individual has taken great strides toward taking

control of his future by creating contingency plans, which, in turn, has helped him deal with the various stressors in his life. This skill will undoubtedly serve him well in his future endeavors.

The evidence also demonstrates, however, that there is a significant probability that Individual's psychological condition will recur. Therefore, a security concern still exists. The following conditions may mitigate Guideline I security concerns:

- (a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) The past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability;
- (e) There is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

The Individual argued, under the first mitigating factor above, that his condition improved with treatment and that he had attended and willingly participated in each of his scheduled counseling sessions. Tr. at 123. The Psychiatrist confirmed that the Individual's condition is readily controllable with treatment. However, the Individual has not demonstrated an ongoing and consistent compliance with a treatment plan because he does not have an active treatment plan, save that of the Psychiatrist, which he admittedly has not followed.

The Individual next argued that, under the second mitigating condition above, he twice voluntarily sought counseling: after learning of his inability to pursue his ideal career and to address his growing frustration with the clearance process. Tr. at 122. Both times, he argued, he completed the treatment with each counselor prescribing no further treatment. Tr. at 122. Thus, he argued he has demonstrated that he voluntarily entered into treatment and received treatment with a favorable prognosis. Tr. at 122. However, this argument is unpersuasive because, again, the Individual is not currently receiving counseling or treatment. Furthermore, while he did apparently demonstrate to the previous treatment providers that he did not need any further treatment, there is little indication that he was given a favorable clinical prognosis regarding future recurrence of depressive episodes by these treatment providers. Regarding his most recent treatment, the fact that it was terminated because the Individual "met his treatment goal" does not in itself provide a sufficiently favorable

prognosis regarding future recurrence. Finally, the Psychiatrist did not provide a favorable prognosis as to the risk of future recurrence of depressive episodes.

The Individual, quite reasonably, did not argue that the evidence satisfies the third mitigating condition. The duly qualified mental health professional employed by the U.S. government in this case, the Psychiatrist, concluded that the Individual's condition has a high probability of recurrence.

Turning to the fourth mitigating condition, the Individual argued that the past stressors that contributed to his diagnosis are no longer present and therefore the situation has been resolved. Tr. at 122. However, while the Individual does not show indications of emotional instability as severe as when he experienced episodes of Major Depressive Disorder, the testimony of the Psychiatrist is that the likelihood of recurrence, and the accompanying compromise to the Individual's judgment, reliability, and trustworthiness, is significantly high. Thus, the evidence does not demonstrate that the situation has been resolved.

Finally, the Individual argued that there is no indication of a current problem because his most recent treatment provider diagnosed him with Adjustment Disorder, which is not a condition of significant concern, and the Psychiatrist diagnosed his condition as in "full remission." Tr. at 118-19. However, the testimony of the Psychiatrist is unequivocal in that the Individual's condition and concurrent lack of treatment presents a significant risk that depressive episodes will recur.

For the reasons stated above, the Individual has not put forth sufficient evidence to mitigate Guideline I security concerns.

## **VI. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guideline I of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving these concerns. Therefore, I cannot conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals